Supreme Court, U.S.
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No. 03-176

IN THE

Supreme Court of the United States

ROY A. COOPER, III, *et al.*,

Petitioners,

v.

R. DANIEL BOYCE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of North Carolina

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

REPLY BRIEF OF PETITIONERS 1

CONCLUSION 2

TABLE OF AUTHORITIES

Page(s)

Gertz v. Robert Welch, Inc.,
418 U.S. 323 (1974) 1, 2

New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 1, 2

St. Amant v. Thompson,
390 U.S. 727 (1968) 2

REPLY BRIEF FOR PETITIONERS

The court below permitted a libel action filed by one candidate for statewide public office against his opponent to proceed because a single political advertisement used the word "charg[ed]" instead of "sought" in referring to the attempted recovery of a legal fee. Pet. at 2. The court treated this case as if it involved nothing more than speech by one private lawyer against another private lawyer (an error respondents repeat). And the court failed to identify – much less take serious account of – the robust protections the First Amendment affords political speech by one candidate for public office concerning the fitness for office of his opponent. *Id.* at 16-24. The effect of the court's determination is to have weighed the constitutional protections for core political speech against the meaning and significance of a single common word and to have found the Constitution wanting.

This Court's immediate intervention is both permissible as a jurisdictional matter, *id.* at 28, and wise as a prudential matter to curtail the otherwise unavoidable chilling effects of the decision below, *id.* at 24-29. The petition cleanly presents important First Amendment questions warranting this Court's review, and this case cannot possibly benefit from further factual development. *Id.* at 29.

Respondents fail in their opposition to join issue with any of these arguments – or any others raised in the petition. On the merits of the question presented, the only rebuttal offered by respondents is that "there is no constitutional value in false statements of fact." Opp. at 11 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974)). But, as explained in the petition, this Court has repeatedly stated that "erroneous statement is inevitable in free debate, and * * * it must be protected if the freedoms of expression are to have the breathing space that they need * * * to survive." *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964)

(internal quotations omitted); *see also St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) ("[T]o insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones."). Indeed, respondents ignore the *Gertz* Court's recognition that, "[a]lthough the erroneous statement of fact is not worthy of constitutional protection, it is nevertheless inevitable in free debate." *Gertz*, 418 U.S. at 340. On the core constitutional questions at issue, respondents simply have no answer.[1]

Petitioners stand by the arguments in the petition. In light of respondents' failure to present any meaningful counter-arguments, petitioners respectfully suggest that this case may be appropriate for summary reversal.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, the Court should grant the petition for a writ of certiorari.

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[1] Respondents suggest in passing, Opp. at 7-8, that some of them may not be "public figures." It should be noted, however, that respondents alleged in their complaint that they have a "statewide reputation of professionalism, honesty, integrity, and success in representing North Carolina citizens and taxpayers." App. 32. But no matter. Respondents fail to identify any legal significance of their assertion with respect to the questions raised in the petition. Indeed, given the core political speech at issue here, none of the constitutional arguments concerning constitutional falsity and defamatory injury raised in the petition turn on a "public figure" determination.

DATED: September 29, 2003

Respectfully submitted,

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